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REPORT No. 374/22
PETITION 1720-15
REPORT ON ADMISSIBILITY

REKIA BOYD
UNITED STATES OF AMERICA

Approved by the Commission electronically on December 19, 2022.

Cite as: IACHR, Report No. 374/22, Petition 1720-15. Admissibility. Rekia Boyd. United States of America. December 19, 2022.

I. INFORMATION ABOUT THE PETITION

Petitioners:	Justin Hansford, Wade H. McMullen, Jr
Alleged victim:	Rekia Boyd
Respondent State:	United States of America ¹
Rights invoked:	Articles I (right to life, liberty and personal security), II (right to equality before the law), XVII (right to recognition of juridical personality and civil rights), XVIII (right to a fair trial), XXV (right of protection from arbitrary arrest), and XXVI (right to due process of law) of the American Declaration of the Rights and Duties of Man ²

II. PROCEEDINGS BEFORE THE IACHR³

Filing of the petition:	May 25, 2015
Notification of the petition to the State:	November 23, 2021
State's first response:	April 14, 2022
Notification of the possible archiving of the petition:	September 17, 2020
Petitioner's response to the notification regarding the possible archiving of the petition:	October 14, 2020

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes, American Declaration (ratification of the OAS Charter on June 19, 1951)

IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i>:	No
Rights declared admissible	Articles I (right to life, liberty and personal security), II (right to equality before the law), and XVIII (right to a fair trial) of the American Declaration
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, in terms of Section VI
Timeliness of the petition:	Yes, in terms of Section VI

¹ Hereafter "United States", "U.S." or "the State".

² Hereinafter "Declaration" or "American Declaration".

³ The observations submitted by each party were duly transmitted to the opposing party.

V. ALLEGED FACTS

1. This petition alleges that Rekia Boyd (or “the alleged victim”) was fatally shot by an off-duty police detective in circumstances that amounted to an extrajudicial killing. The petition further alleges that this off-duty police detective has ultimately not been held criminally responsible for the fatal shooting of Rekia Boyd.

2. According to the petition, on March 21, 2012, the alleged victim and her friends were exiting a house in Chicago, Illinois when they were confronted by “DS”, an off-duty detective attached to the Chicago Police Department. The petition alleges that a DS had driven up to the house in his vehicle to confront Rekia Boyd and her friends about noise coming from the house. According to the petition, there was a heated argument between DS and the group, following which DS pulled out his gun (while remaining in his vehicle) and fired 10 to 18 shots at the group. The petition states that Rekia Boyd received a bullet to the back of her head, which was fatal. The petition alleges that alleged victim did not have a weapon and posed no physical threat to DS. The petition further asserts that the entry of the bullet to the back of Rekia Boyd’s head suggests that she was attempting to retreat at the time she was shot.

3. The petition further states that one of Rekia Boyd’s friends, Antonio Cross, was shot in the hand by DS. According to the petition, other police officers arrived on the scene after being flagged down by Antonio Cross. The petition indicates that it was only after the arrival of these police officers that DS then identified himself as an off-duty police detective.

4. According to the petition, DS did not face consequences related to this incident until November 23, 2013, when he was charged with involuntary manslaughter, reckless discharge of a firearm, and reckless conduct. The petition states that the initiation of this prosecution took place more than one year and eight months after the fatal shooting of the alleged victim. The petition indicates that the charges against DS were brought by the Cook County State’s Attorney’s Office, which prosecutes all misdemeanor and felony crimes committed in Cook County, Illinois.

5. According to the petition, on April 20, 2015, the judge ruled, in a rare, directed verdict, that DS was not guilty of involuntary manslaughter. According to the petition, in his analysis, this judge observed that “*the act of intentionally firing a gun at some person or persons on the street is an act that is so dangerous it is beyond reckless; it is intentional and the crime, if any there be, is first degree murder.*” According to the petition, the judge found that the Cook County State’s Attorney’s Office had incorrectly charged DS charging him with involuntary manslaughter when the correct charge should have been first-degree murder, a more serious crime. The petition further submits that the judge ruled that the charge of involuntary manslaughter (instead of first-degree murder) meant that the *mens rea* of involuntary manslaughter (recklessness) could not be proved. Accordingly, the judge held that the case against DS could not go any further; and found it “unfortunate” that the procedural posture of the case prevented the court from reaching the core issue of whether the defendant’s actions were justified.

6. The petitioners contend that the directed verdict arose from the failure of the County State’s Attorney’s Office to correctly charge DS with first-degree murder instead of involuntary manslaughter. The petitioners submit that, such a directed verdict cannot be appealed, and that domestic law prevents DS from being tried again. Accordingly, the petitioners submit that there is no remedy available to challenge the outcome of the criminal proceedings against DS.

7. Ultimately, the petitioners submit that the alleged victim has suffered various violations of her human rights, including the right to life, and the right due process/judicial protection. The petitioners further submit that the State has failed to remedy these violations.

8. The State submits that the petition should be archived or declared inadmissible. In this regard, the State submits that the petitioners have not notified the IACHR that in 2013, the family of Rekia Boyd received a settlement of \$4.5 million arising from a wrongful death suit. The State contends that the

settlement agreement and ensuing dismissal of the suit (before the Circuit Court of Illinois) demonstrate that the State has accorded adequate and effective remedies for the actions surrounding Rekia Boyd's death.

9. The State further submits that nothing in the principles established by the American Declaration or in the IACHR's Rules of Procedure would suggest that the Commission should intervene in a matter that has been voluntarily settled between a petitioner and governmental authorities that are accused of violating the petitioner's rights. The State asserts that implicit in the requirement of exhaustion in Article 31 of the Commission's Rules of Procedure is the incontrovertible principle that if a petitioner has received an effective remedy in the domestic system, then his or her claim is not admissible before the international forum. Based on the foregoing, the State submits that the petition is inadmissible under with Articles 28 and 31 of the Commission's Rules of Procedure.

10. The State indicates it has undertaken other general remedial measures. In this regard, the State submits that on December 7, 2015, the U.S. Department of Justice opened an investigation into the City of Chicago's Police Department and Independent Police Review Authority. According to the State in 2017, the U.S. Department of Justice announced that it found reasonable cause to believe that the Chicago Police Department engages in a pattern or practice of using force, including deadly force, in violation of the Fourth Amendment of the U.S. Constitution. The State indicates that since then, the City of Chicago and the Attorney General of the State of Illinois have entered into a court-enforceable agreement to work together with community input to address some of the deficiencies found in the federal investigation.

VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

11. The parties diverge on the issue of exhaustion of domestic remedies. The petitioners contend that there is no legal recourse against the directed verdict that resulted in the acquittal of DS (of involuntary manslaughter). The petitioners emphasize that this acquittal arose from the failure of the County State's Attorney's Office to correctly charge DS with first-degree murder instead of involuntary manslaughter.

12. On the other the hand, the State submits that in 2013 the family of Rekia Boyd received a settlement of \$4.5 million arising from a wrongful death suit. The State contends that this settlement demonstrates that the State has accorded adequate and effective remedies for the actions surrounding Rekia Boyd's death. Accordingly, the State argues that the petitioners have been provided with an effective remedy and that the petition is therefore inadmissible.

13. As the Commission has stated before, in cases of serious violations of the rights to life and physical. As the Commission has stated before, in cases of serious violations of the rights to life and physical integrity, such as alleged extrajudicial killing, the appropriate and effective remedy is the undertaking of an effective criminal investigation aimed at the clarification of the facts and, if necessary, individualization and prosecution of those persons responsible. The Commission notes that there was a court-approved settlement between the State and the parents of Rekia Boyd. However, such a settlement only applies to claims of a civil nature arising from the facts surrounding the death of the alleged victim; and that this does not derogate from, or substitute for the State's international obligation to conduct an effective criminal investigation. In this regard the IACHR deems necessary to clarify that regardless of the nature and legal effects the said agreement could have under domestic law, access by the victims to the IACHR is an entirely different matter, one governed by international law. Therefore, a petition cannot be, in principle, dismissed in the admissibility stage solely based on a settlement or agreement concluded before domestic courts.⁴

14. According to the information available the only criminal proceedings regarding the killing of Rekia Boyd was the prosecution of DS for involuntary manslaughter. The record further indicates that DS was acquitted because: (a) the *mens rea* of involuntary manslaughter (recklessness) could not be proved; and (b)

⁴ See IACHR Report No. 198/20 Petition 524-16, Admissibility, Anastasio Hernandez Rojas and Family, United States of America, para. 11.

the trial judge found that the Cook County State's Attorney's Office had incorrectly charged DS with involuntary manslaughter when the correct charge should have been first-degree murder, a more serious crime. There is no dispute between the parties on the outcome of these proceedings. On the face of it, the Commission considers that the failure to prosecute DS for first degree murder, instead of involuntary manslaughter, substantially derogates from the State's obligation to conduct an investigation to clarify the facts and to individualize and prosecute the person responsible for the death of the alleged victim.

15. In the circumstances, the IACHR concludes that the present petition complies with the requirement of exhaustion of domestic remedies as set forth in Article 31 of its Rules of Procedure. The Commission also notes that the petition was filed on May 25, 2015, which was within six months of the completion of criminal proceedings against DS (on April 20, 2015). Accordingly, the IACHR concludes that the petition meets the time deadline prescribed by Article 32 of the Commission's Rules of Procedure.

VII. ANALYSIS OF COLORABLE CLAIM

16. The petitioners allege that Rekia Boyd was the victim of an extrajudicial killing by DS and that the State has failed to remedy consequential violations of alleged victim's rights, including the right to life and the right to judicial protection. The petitioners emphasize that DS was never held criminally accountable for his actions.

17. As the Commission has established before, as a general rule, a criminal investigation must be conducted promptly in order to clarify the facts, protect the interests of the victims, preserve the evidence and where possible, to individualize and prosecute the person or persons responsible. As noted above, the Commission does not consider that this obligation is satisfied or erased by a court-endorsed settlement of civil claims arising from the circumstances leading to, or aftermath of the killing of Rekia Boyd.

18. Further, the Commission considers that the failure to prosecute DS for first degree murder, instead of involuntary manslaughter; and the consequential directed verdict of acquittal of DS essentially frustrated the conduct of an effective criminal investigation aimed at clarifying the facts leading to the death of Rekia Boyd; and to take effective and adequate steps to prosecute the person responsible for alleged victim's death. The Commission considers that the State did not fully discharge the obligation to investigate, and that this status quo remains after more than ten years since the death of the alleged victim.

19. After assessing the position of the Parties, the IACHR considers that the claims submitted by the petitioners are not manifestly groundless, and that prima facie they may constitute violations of the rights enshrined in Articles I (right to life, liberty and personal security), II (right to equality before the law), and XVIII (right to a fair trial) of the American Declaration.

VIII. DECISION

1. To find the instant petition admissible in relation to Articles I (right to life, liberty and personal security), II (right to equality before the law) and XVIII (right to a fair trial) of the American Declaration; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 19th day of the month of December, 2022. (Signed:) Julissa Mantilla Falcón, President; Margarete May Macaulay, Second Vice President; Joel Hernández, and Roberta Clarke, Commissioners.